

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

TIMOTHY KNOEPPEL

§

v.

§

C.A. NO. C-09-295

§

RICK THALER, ET AL.

§

**MEMORANDUM AND RECOMMENDATION TO DENY
PETITIONER'S MOTION TO PROCEED *IN FORMA PAUPERIS***

Petitioner is a state inmate currently incarcerated at the East Texas Unit in Henderson, Texas who has filed a habeas petition pursuant to 28 U.S.C. § 2254, challenging a disciplinary proceeding. (D.E. 8).¹ On December 7, 2009, he filed a motion to proceed *in forma pauperis*. (D.E. 17).

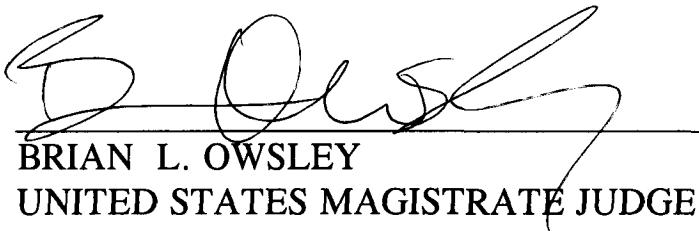
On December 7, 2009, petitioner provided documents establishing that he currently has a balance of \$27.58 in his inmate trust fund account. (D.E. 16, at 5). The filing fee for a habeas corpus petition is \$5.00. At a December 10, 2009 telephonic hearing, petitioner acknowledged that the balance was provided to him by prison officials. Moreover, he explained that he had previously tried to pay the filing fee without any success. Petitioner indicated that either he or a family

¹ On October 30, 2009, petitioner filed a complaint on the form provided for civil rights actions pursuant to 42 U.S.C. § 1983. (D.E. 1). On November 5, 2009, petitioner sent a letter indicating that instead of a civil rights action, he actually intended to file a habeas petition challenging a disciplinary proceeding. (D.E. 8). On December 10, 2009, during a telephonic hearing, petitioner was instructed to file a completed petition regarding the disciplinary proceedings.

member on his behalf would pay the filing fee.

It is respectfully recommended that petitioner be found not indigent and that his application to proceed *in forma pauperis*, (D.E. 17), be denied. It is further respectfully recommended that a previous application to proceed in forma pauperis, (D.E. 2), filed in conjunction with his civil rights complaint be denied as moot. Additionally, it is respectfully recommended that petitioner be instructed to pay the filing fee within twenty (20) days of the date of entry of any order adopting this memorandum and recommendation, or voluntarily dismiss the petition. Finally, it is respectfully recommended that petitioner be advised that failure to pay the filing fee within the time period proscribed may result in dismissal of his petition for failure to prosecute.

ORDERED this 11th day of December 2009.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 8(b)(3) of the Rules Governing § 2254 Cases; Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 02-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a magistrate judge's report and recommendation within **FOURTEEN (14) DAYS** after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).